

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**Kelly L. Harding,**

**Petitioner,**

**v.**

**Warden, Chillicothe  
Correctional Institution,**

**Respondent.**

**Case No. 2:19-cv-83**

**Judge Michael H. Watson**

**Magistrate Judge Chelsey M. Vascura**

**ORDER**

On May 1, 2019, the Magistrate Judge issued a Report and Recommendation ("R&R") recommending that Petitioner's Motion to Stay Proceedings be denied and that the Petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed without prejudice as unexhausted. ECF No. 13. Although the parties were advised of the right to file objections to the R&R, and of the consequences of failing to do so, no objections have been filed. Instead, Petitioner has filed 1) a second Motion to Stay Proceedings in order to supplement the record with a copy of the transcripts of the hearing on his motion to suppress and 2) a Motion to Expand the Record to include a copy of the attached transcripts of that hearing. ECF Nos. 14–15. Respondent has filed responses in opposition. ECF Nos. 16–17.

However, Petitioner has already submitted a copy of the transcript from the suppression hearing as part of the record before this Court. ECF 1-1, PAGEID

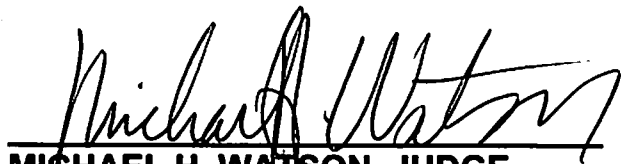
## 44-133. But this is irrelevant to the dismissal of this action. As discussed in the R&R, Petitioner's claims remain unexhausted pending the trial court's issuance of factual findings in regard to the denial of Petitioner's state post-conviction petition, and resolution of post-conviction proceedings in the state courts. Petitioner must exhaust his state court remedies prior to obtaining consideration of his claims in federal habeas corpus proceedings. 28 U.S.C. § 2254(b)(1), (c). Therefore, Petitioner's second Motion to Stay and Motion to Expand the Record, ECF Nos. 14-15, are **DENIED**.

The R&R, ECF No. 13, is **ADOPTED** and **AFFIRMED**. Petitioner's Motion to Stay for Purpose of Exhausting Additional State Remedies, ECF No. 2, is **DENIED**. This action is hereby **DISMISSED** without prejudice as unexhausted.

Petitioner has waived his right to appeal by failing to file objections.

Therefore, the Court **DECLINES** to issue a certificate of appealability.

**IT IS SO ORDERED.**

  
**MICHAEL H. WATSON, JUDGE**  
**UNITED STATES DISTRICT COURT**